IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1747 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
POPATJI BHURAJI VAGHELA - Opponent(s)

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Appearance :
MR KC SHAH, APP for Appellant(s)
None for Opponent(s)

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 17/07/2007

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE J.R.VORA)

1. This Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by the learned Assistant Sessions Judge, Banaskantha at Palanpur, on 17th of May, 2005, in Special Case No.11 of 2004, whereby the present respondent, being accused in the Special Case, came to be acquitted for the offences punishable under Sections 504, 506(2) of the Indian Penal Code and for the offences punishable under Section 3(1)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. According to the prosecution case, the incident occurred on 14th of October, 2003 at 14:00 hrs. at village Madana when the complainant Savitaben, wife of Motibhai Savabhai Chamar, was going towards her house from Anganwadi (children school), when the accused-respondent met her and threatened her that why she had filed a compliant against him at Gadh Police

Station and got him arrested. Thereafter, the accused insulted her caste and gave abuses. The complainant – Savitaben requested him not to give abuses and thereupon, the accused got excited and threatened her to kill. The complainant filed her complaint before Gadh Police Station which is produced on record at Ex.21. A crime was registered vide Crime Register No.II-93/2003 and investigation was carried on. Thereafter, chargesheet for the abovesaid offences came to be preferred against the accused in the Court of Chief Judicial Magistrate, First Class at Palanpur. The case was committed to Special Court and was registered as Special Case No.11 of 2004. The learned trial Judge framed charges against the accused vide Ex.4 on 21st of July, 2004, and accused-respondent pleaded “not guilty” vide Ex.5. Therefore, the prosecution examined five witnesses and submitted on record documentary evidence. The learned trial Judge recorded statement of the accused under Section 313 of the Code of Criminal Procedure

wherein the explanation of the accused was of total denial and he further stated that to extort money from him, this false case had been filed against him. After hearing the prosecution as well as defence, the learned trial Court came to the above conclusion to acquit the respondent and hence, this Appeal.

3. Learned APP Mr.K.C.Shah appearing for the appellant-State vehemently urged that the complainant – PW 1, Ex.14, supported the prosecution case and stated that how the incident had occurred and she also deposed about the role played by the accused in the incident. She was corroborated by her complaint. The learned APP further stated that the version of two witnesses, Kantibhai Madhabhai and Ishwarbhai Umedbhai, though one of them is eye-witness, ought to have believed by the learned trial Judge. It is urged that no reasons have been assigned by the trial Court for not believing the complainant and therefore, the matter requires consideration.

4. We have carefully evaluated the contentions raised by the learned APP. We have carefully gone through the Record and Proceedings of the trial Court which is available with us. The learned APP assisted this Court with extra copies of the evidence and necessary documents and thus, at this juncture also, we have carefully examined the vital features of the case and reasonable probability arising out of the evidence recorded during the trial. We have carefully examined the reasons advanced by the trial Court for acquittal.

5. The prosecution examined Savitaben as PW 1 at Ex.14. She stated that while at the time and date of incident, she was going towards her house, she was accosted by the accused and the accused threatened her to kill and insulted her caste. According to the complainant, at that time, her nephew Ishwarbhai, who was coming from Chandisar, and one Kantibhai Madhabhai, were present, and they persuaded the accused and thereafter, she came to her

house and conveyed this fact to her husband and filed the compliant. In her cross-examination, she admitted that the incident occurred at a distance of 5 to 10 feet from Anganwadi where 35 to 40 children ordinarily attend. She also admitted that at the time of incident, Kantibhai and Ishwarbhai, both were at their respective home. She also admitted that the house of accused situated at village Vavdi was at a distance of 50 kilometers from her village. She also admitted that earlier, she and her husband had filed three cases under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, against the present accused. She denied that she had received any amount from Public Welfare Department.

5.1 PW 2 – Kantibhai Madhabhai and PW 3 Ishwarbhai Umedbhai, Examined at Exs.15 and 17 respectively, are not helpful to the prosecution case because PW 2 – Kantibhai has stated that he did not know anything about the

incident while PW 3 – Ishwarbhai stated that the accused was excited and insulted caste of the complainant and threatened her to kill. In his cross-examination, he also admitted the distance between village Vavdi and village Madana and stated that he did not know the accused. He also admitted that the complainant Savitaben was his maternal aunt. He further stated that at the time of incident, Kantibhai was present.

5.2 PW 4 – Sureshkumar Narsinhbhai, Ex.19, was serving as Head Constable at Gadh Police Station and according to him, he was incharge of Police Station on 14th of October, 2003, from 13:00 to 24:00 hrs. During that period, complainant Savitaben approached the Police Station and she had given her compliant which was recorded by Mr.A.J.Gondaliya, the then PSI at Gadh Police Station. Upon the compliant being lodged, he registered the crime and entrusted the investigation to PSI, Gadh Police Station.

5.3 PW 5 – Ashwinkumar Jamnadas Gondaliya, Ex.20, was the then PSI, Gadh Police Station, and he stated that he had recorded the compliant as offered by the complianant – Savitaben, which he identified at Ex.21. He drew the Panchnama of scene of offence which he produced at Ex.16. He recorded the statement and thereafter, the investigation was handed over to Deputy Superintendent of Police, Deesa.

6. From above evidence, after appreciating the same, the learned trial Judge came to the conclusion that the allegations of prosecution against the accused are in respect of giving abuses, administering threat to kill and insulting caste of the complainant. The learned trial Judge came to the conclusion that there was contradiction in the deposition of the complainant and her complaint. The complaint is not supported fully by the deposition of Prosecution Witness Ishwarbhai because this witness did not state anything about giving

abuses by the accused to the complainant. The learned trial Judge further concluded that Prosecution Witness – Kantibhai Madhabhai examined by the prosecution did not support the prosecution case and half-hearted support of the witness must be carefully appreciated as the witness was related to the complainant. Thus, according to the trial Court, there was no independent corroboration to the say of the complainant. Further, it was an established fact that against the accused, the complainant and her husband previously filed three to four cases under the the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, and therefore, there was previous enmity between the parties. The learned trial Judge came to the conclusion that the compliant was not supported by independent corroboration and that the Investigating Officer, who ultimately investigated the offence, could not be examined, and hence, the accused was entitled to benefit of doubt as the prosecution failed to prove the case against

the accused beyond reasonable doubt.

7. The judgment and order under challenged is an order of acquittal delivered by the trial Court. The appellate Court must be slow in interfering with orders of acquittal. The High Court, being the appellate Court, is empowered to re-evaluate and re-appreciate the evidence recorded during the trial and come to its own findings, but the law requires that the findings arrived at by the trial Court cannot be interfered with unless the findings are perverse, against weightage of evidence and demonstrably unsustainable or palpably wrong. Even if second reasonable finding is possible from re-appreciation of evidence, unless reasons assigned by the trial Court are erroneous as aforestated manner, no interference is permitted in orders against acquittal in Appeals.

8. Though we have re-appreciated the evidence, we do not find any reason to interfere with the findings of the trial Court. However, it appears

that bona fide error is committed in the judgment while the learned trial Judge observed in the judgment impugned that the Investigating Officer – PSI Mr.Gondaliya was not examined. In fact, PSI Mr.Gondaliya is examined as PW 5 and the Deputy Superintendent of Police, who took over the charge of the investigation from PSI Gondaliya, could not be examined by the prosecution. In any case, the trial Court is the best judge to assess the credibility of a witness because the trial Court has an opportunity to notice the demeanor of the witness in the Box. The reasons assigned for the acquittal by the trial Court are based on evidence as recorded during the trial and due weightage is also given to the evidence while appreciating the same. In any case, the reasons assigned and findings arrived at by the trial Court cannot be said to be perverse, palpably wrong or unsustainable. Therefore, we do not find the judgment and order impugned exceptional even at this juncture.

9. In view of the above, leave to Appeal is refused. Appeal is dismissed.

(J.R.Vora, J.)

(Smt.Abhilasha Kumari, J.)

(sunil)